INTRODUCTORY COMMENTS

Claims 3-8, 10-16, 18-24, 27-33, 63, 65-71, 74-78, 80, 81 and 89-97 were pending in the subject application for the non-final Office Action dated January 26, 2009. Claims 4, 5 and 16 have been withdrawn from consideration. The remaining claims have been rejected on various grounds. In view of the following amendments and remarks, reconsideration and allowance of the subject application are hereby requested.

AMENDMENTS TO THE CLAIMS:

1. (Cancelled)

2. (Cancelled)

3. (Previously Presented) The spinal construct of claim 76, wherein said second pair of side surfaces are arranged substantially parallel to one another.

4. (Withdrawn) The spinal construct of claim 76, wherein said second pair of side surfaces are angled relative to one another to define a taper extending along said longitudinal axis corresponding to the natural lordotic angle between the adjacent vertebral bodies.

5. (Withdrawn) The spinal construct of claim 76, wherein said first pair of side surfaces are angled relative to one another to define a taper extending along said longitudinal axis to facilitate insertion of said spinal implant within the intervertebral space between the adjacent vertebral bodies.

6.-9. (Cancelled)

10. (Currently Amended) The spinal construct of claim ~~63~~ 76, further comprising an interlock between said spinal implant and said elongate member to selectively prevent at least one of rotational and lateral movement of said spinal implant relative to said elongate member subsequent to alignment of said second transverse dimension along said select height of the intervertebral space.

11. (Original) The spinal construct of claim 10, wherein said interlock prevents both rotational and lateral movement of said spinal implant relative to said elongate member.

12. (Original) The spinal construct of claim 10, wherein said interlock comprises:

at least one projection portion extending from one of said spinal implant and said elongate member; and

at least one aperture defined by another of said spinal implant and said elongate member; and

wherein insertion of said at least one projection portion into a respective one of said at least one aperture prevents said at least one of rotational and lateral movement of said spinal implant relative to said elongate member.

13. (Currently Amended) The spinal construct of claim 12, ~~further comprising a fastener; and~~ wherein insertion of said at least one projection portion into said respective one of said at least one aperture is accomplished by ~~engagement of~~ tightening of said fastener ~~between said elongate member and said spinal implant~~.

14. (Currently Amended) The spinal construct of claim 13, wherein ~~said elongate member includes a passage extending therethrough and~~ said spinal implant includes a threaded opening; and

wherein ~~said engagement comprises inserting~~ said threaded shank of said fastener is inserted through said passage in said elongate member and ~~threading said fastener into~~ is threadingly engaged within said threaded opening in said spinal implant.

15. (Previously Presented) The spinal construct of claim 12, wherein said at least one projection portion and said at least one aperture each being offset from said longitudinal axis.

16. (Withdrawn) The spinal construct of claim 12, wherein said interlock comprises:

at least two projection portions extending from said one of said spinal implant and said elongate member; and at least two apertures defined by said another of said spinal implant and said elongate member; and

wherein insertion of said at least two projection portions into respective ones of said at

least two apertures prevents said at least one of rotational and lateral movement of said spinal implant relative to said elongate member.

17. (Cancelled)

18. (Cancelled)

19. (Currently Amended) The spinal construct of claim ~~63~~ 76, wherein an axially facing portion of said spinal implant defines at least two tool engaging elements to facilitate rotation of said spinal implant within said intervertebral space about said longitudinal axis.

20. (Previously Presented) The spinal construct of claim 19, wherein said tool engaging elements are apertures.

21. (Original) The spinal construct of claim 19, wherein said tool engaging elements are positioned diametrically opposite one another relative to said longitudinal axis.

22. (Currently Amended) ~~The spinal construct of claim 21,~~ A spinal construct for engagement with adjacent vertebral bodies, comprising:

a spinal implant comprising an intervertebral fusion device including one or more openings configured to promote fusion with the adjacent vertebral bodies, wherein said intervertebral fusion device includes a hollow interior with said openings in communication with said hollow interior, said spinal implant extending along a longitudinal axis and having a first transverse dimension sized for insertion within an intervertebral space between the adjacent vertebral bodies and a second transverse dimension greater than said first transverse dimension and corresponding to a select height of said intervertebral space;

a bone growth promoting material positioned within said hollow interior to facilitate fusion with the adjacent vertebral bodies; and

an elongate member sized to span the intervertebral space and a plurality of bone anchors extending transversely from said elongate member and into engagement with the adjacent

vertebral bodies to establish said select height of the intervertebral space and to maintain said select height as said spinal implant is transitioned from said first transverse dimension to said second transverse dimension along said select height to thereby provide controlled compression of said spinal implant, and wherein said spinal implant is rotatably coupled with said elongate member to allow selective rotation of said spinal implant relative to said elongate member about said longitudinal axis to align said second transverse dimension along said select height; and

wherein an axially facing portion of said spinal implant defines at least two tool engaging elements to facilitate rotation of said spinal implant within said intervertebral space about said longitudinal axis, wherein said tool engaging elements are positioned diametrically opposite one another relative to said longitudinal axis; and

wherein said elongate member defines a pair of arcuate slots positioned diametrically opposite one another relative to said longitudinal axis, said arcuate slots being sized and configured to receive said tool engaging elements during rotation of said spinal implant about said longitudinal axis.

23.-26. (Cancelled)

27. (Currently Amended) A spinal implant assembly, comprising:

a device adapted for insertion into an intervertebral space between an adjacent pair of vertebral bodies, said device extending along a longitudinal axis and including:

a pair of primary side surfaces spaced apart and arranged generally opposite one another to define a primary transverse dimension; and

a pair of secondary side surfaces spaced apart and arranged generally opposite one another to define a secondary transverse dimension sized for insertion into the intervertebral space, said primary transverse dimension sized greater than said secondary transverse dimension and corresponding to a select height of said intervertebral space;

wherein said device has a substantially rectangular transverse cross section and includes a rounded transitional surface at diagonally opposite corner portions of said device extending between said pair of primary side surfaces and said pair of secondary side surfaces to facilitate rotation of said device within the intervertebral space about said longitudinal axis; and

an elongate member sized to span the intervertebral space and a plurality of bone anchors extending transversely from said elongate member and into engagement with the adjacent vertebral bodies to establish said select height of the intervertebral space and to maintain said select height of the intervertebral space, said device being rotatable relative to said elongate member about said longitudinal axis to align said primary transverse dimension along said select height of the intervertebral space to thereby provide controlled compression of said device; and

wherein said device is rotatably coupled with said elongate member by a fastener including a threaded shank extending through a passage in said elongate member, wherein tightening said fastener interlocks said device with said elongate member to selectively prevent rotational movement of said device relative to said elongate member subsequent to alignment of said primary transverse dimension along said select height of the intervertebral space; and

wherein said device comprise an intervertebral fusion device including a hollow interior with openings extending through said second pair of side surfaces and in communication with said hollow interior; and

further comprising a bone growth promoting material positioned within said hollow interior to facilitate fusion with the adjacent vertebral bodies.

28. (Previously Presented) The spinal implant assembly of claim 27, wherein said primary transverse dimension is oriented substantially perpendicular to said secondary transverse dimension.

29. (Cancelled)

30. (Previously Presented) The spinal implant assembly of claim 27, further comprising an interlock between said device and said elongate member to selectively prevent at least one of rotational and lateral movement of said device relative to said elongate member subsequent to alignment of said primary transverse dimension along said select height of the intervertebral space.

31. (Original) The spinal implant assembly of claim 30, wherein said interlock comprises:

at least one projection portion extending from one of said device and said elongate member; and

at least one aperture defined by another of said device and said elongate member; and

wherein insertion of said at least one projection portion into a respective one of said at least one aperture prevents said at least one of rotational and lateral movement of said device relative to said elongate member.

32. (Currently Amended) ~~A spinal implant assembly, comprising:~~ The spinal implant assembly of claim 27, wherein said ~~a~~ device ~~comprising~~ comprises a fusion cage ~~adapted for insertion into an intervertebral space between an adjacent pair of vertebral bodies, said device extending along a longitudinal axis and defining a primary transverse dimension and a secondary transverse dimension, said secondary transverse dimension sized for insertion into the intervertebral space, said primary transverse dimension sized greater than said secondary transverse dimension and corresponding to a select height of said intervertebral space; and~~

~~a bone growth promoting material positioned within said fusion cage to facilitate fusion with the adjacent vertebral bodies; and~~

~~an elongate member sized to span the intervertebral space and a plurality of bone anchors extending transversely from said elongate member and into engagement with the adjacent vertebral bodies to establish said select height of the intervertebral space and to maintain said select height as said device is rotated about said longitudinal axis to align said primary transverse dimension along said select height to thereby provide controlled compression of said device; and~~

~~wherein said fusion cage is rotatably coupled with said elongate member to allow selective rotation of said spinal implant relative to said elongate member about said longitudinal axis to align said secondary transverse dimension along said select height of the intervertebral space to thereby provide controlled compression of said fusion cage~~.

33. (Currently Amended) ~~A spinal implant assembly, comprising:~~

~~an intervertebral fusion device adapted for insertion into an intervertebral space between~~

~~an adjacent pair of vertebral bodies and including one or more openings configured to promote fusion with the adjacent vertebral bodies, wherein said intervertebral fusion device includes a hollow interior with said openings in communication with said hollow interior and a bone growth promoting material positioned within said hollow interior to facilitate fusion with the adjacent vertebral bodies, said device extending along a longitudinal axis and having~~ The spinal implant assembly of claim 27, wherein said device has a parallelepiped configuration ~~defining a primary transverse dimension and a secondary transverse dimension, said secondary transverse dimension sized for insertion into the intervertebral space, said primary transverse dimension sized greater than said secondary transverse dimension and corresponding to a select height of said intervertebral space; and~~

~~an elongate member sized to span the intervertebral space and a plurality of bone anchors extending transversely from said elongate member and into engagement with the adjacent vertebral bodies to establish said select height of the intervertebral space and to maintain said select height as said device is rotated about said longitudinal axis to align said primary transverse dimension along said select height to thereby provide controlled compression of said device~~.

34.-73. (Cancelled)

74. (Previously Presented) The spinal construct of claim 76, wherein said intervertebral fusion device is formed of a porous material to facilitate fusion with the adjacent vertebral bodies.

75. (Previously Presented) The spinal construct of claim 76, wherein said first transverse dimension is oriented substantially perpendicular to said second transverse dimension.

76. (Currently Amended) A spinal construct for engagement with adjacent vertebral bodies, comprising:

a spinal implant extending along a longitudinal axis and including:

a first pair of side surfaces spaced apart and arranged generally opposite one

another to define a first transverse dimension sized for insertion within an intervertebral space between the adjacent vertebral bodies; and

a second pair of side surfaces spaced apart and arranged generally opposite one another to define a second transverse dimension greater than said first transverse dimension and corresponding to a select height of said intervertebral space;

wherein said spinal implant has a substantially rectangular transverse cross section and includes a rounded transitional surface at diagonally opposite corner portions of said spinal implant extending between said first pair of side surfaces and said second pair of side surfaces to facilitate rotation of said spinal implant within the intervertebral space about said longitudinal axis; and

an elongate member sized to span the intervertebral space and a plurality of bone anchors extending transversely from said elongate member and into engagement with the adjacent vertebral bodies to establish said select height of the intervertebral space and to maintain said select height of the intervertebral space, wherein said spinal implant is rotatably coupled with said elongate member to allow selective rotation of said spinal implant relative to said elongate member about said longitudinal axis to align said second transverse dimension along said select height of the intervertebral space to thereby provide controlled compression of said spinal implant; and

wherein said spinal implant is rotatably coupled with said elongate member by a fastener including a threaded shank extending through a passage in said elongate member, wherein tightening said fastener interlocks said spinal implant with said elongate member to selectively prevent rotational movement of said spinal implant relative to said elongate member subsequent to alignment of said primary transverse dimension along said select height of the intervertebral space; and

wherein said spinal implant comprises an intervertebral fusion device including a hollow interior with openings extending through said second pair of side surfaces and in communication with said hollow interior; and

further comprising a bone growth promoting material positioned within said hollow interior to facilitate fusion with the adjacent vertebral bodies.

77. (Previously Presented) The spinal construct of claim 76, wherein said elongate member comprises a plate define a first opening overlapping one of the adjacent vertebral bodies and a second opening overlapping another of the adjacent vertebral bodies; and

wherein said bone anchors comprise bone screws extending through said first and second openings for engaging said plate to the adjacent vertebral bodies.

78.-97. (Cancelled)